IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL **APPELLATE JURISDICTION**

CRI.APPLICATION NO.2419 OF 2005
IN
CRI.REVISION APPLICATION **NO.113 OF 200**5
AND
CRI.REVISION APPLICATION NO.113 OF 2005

Shri Vijay Bhairavnath Joshi,
r/o Sonkar Complex, Flat No.11,
Opp Navmaharashtra School, Pimprigaon,
Pimpri, Pune-411 017. .. Petitioner.
Vs
Mrs Pournima Vijay Joshi,
residing at C/o: Chandrakant P.Badave
Satyasai Apartment, Flat No.18,
Suncity Road, S.No.16/1/5,
Anandnagar, Vadgaon B-11,
Pune. .. Respondent.

Ms Kokila Kalra i/by Mrs Manjula Rao, for the petitioner.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : APRIL 25, 2005.

ORAL JUDGMENT: (PER S.B.MHASE, J.)

1. Heard the learned counsel for the petitioner.

2. This Criminal Revision Application arises from a Petition M.A. No.3/2004, which was filed for condonation of delay and for setting aside the exparte order dated 17.6.2003 in P.E.No.160/2003, which was a proceeding under section 125 of Criminal Procedure Code.

3. P.E.No.160/2003 was filed by the respondent-wife for getting monthly maintenance under section 125 since the husband-present petitioner refused and neglected to maintain the wife. In the said proceedings, the notices were sent by the Court through Post which were refused and, therefore, ultimately P.E.No.160/2003 was decided exparte on 17.6.2003 granting maintenance at the rate of Rs.1500/- p.m. to the respondent-wife and Rs.500/- to the child. Thereafter, when that order was tried to be executed under section 125(3) of Cr.P.C, the present Petition M.A.No.3/2004 was filed by the petitioner-husband, making a prayer that the delay may be condoned and the order passed by the Family Court in P.E.No.160/2003 be set aside.

4. The learned counsel for the petitioner submitted that interference of this Court is necessary because the proceeding was exparte and there was no proper service of summons on the petitioner-husband. We are not impressed by the said submission. We have found that the petitioner-husband, purposely and with an ulterior motive to harass the wife, had refused to accept the notices sent through postmen. It is revealed from paragraph 15 of the said Judgment that the summonses

were sent by the Court on his residential address and equally at the place of his employment. Both, the summons sent at the residential address is returned with an endorsement "refused" and the summons sent at the place of his employment is returned with an endorsement "unclaimed", which equally means refusal. Therefore, the petitioner-husband was knowing what were the contents of the said summons and in order to avoid appearance in the Court he had refused to accept the same. This is a strategy because after passing of an exparte order, probably he must have thought that he will approach the Court for setting aside the order and thereafter delay the proceedings further. On perusal of the judgment and the facts revealed, it is crystal clear that there was proper service on the petitioner-husband through postmen. One postman may create problem but repeatedly different postmen at different places will not play the same mischief and,therefore, the submission made by the learned counsel for the petitioner that there was no service, is without any merit and is hereby rejected.

5. The next question the learned counsel for the petitioner submitted, is that the amount of Rs.1500/- per month to the wife and Rs.500/- per month to the

child granted, is very exorbitant. But we find that the wife has claimed that the husband is getting salary of Rs.17,000/- pm approximately. It is a fact that the husband is working in TELCO and the Court has taken into consideration his salary as Rs. 5000 to 6000 and fixed the maintenance at the rate of Rs.1500/- to the wife and Rs.500/-to the child and therefore we do not find any substance in the said contention. We cannot forget that the proceedings under section 125 are expected to provide speedy trial to the wife and children in order to avoid delay. The protracted trial, like this, will defeat the very objection of the said provisions. We do not find any substance in this revision. Both, the Criminal Application for condonation of delay and the Revision Application are summarily rejected.

(D.B.BHOSALE, J.) **(S.B.MHASE, J.)**

/rrt/db-05/db-25405/appln-rev-113

HIGH COURT
CRIMINAL **APPELLATE SIDE**

CRI.APPLICATION NO.2419 OF 2005 IN CRI.REV.APPLN 113/05
AND
CRI.REVISION APPLICATION NO.113 OF 2005

Date of Judgment:

April 25, 2005

For approval and signature

THE HON'BLE MR.JUSTICE S.B.MHASE.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?